

October 15, 2015

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Ex Parte Presentation

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 12-375, Inmate Calling Service

Dear Ms. Dortch:

This filing is respectfully submitted on behalf of Pay Tel Communications, Inc. (“Pay Tel”) in connection with the above-referenced proceeding. This filing responds to questions raised in today’s meeting between various representatives of the ICS industry and Commissioner Clyburn and other FCC staff¹ concerning the likelihood that one or more parties to this proceeding would appeal from an order adopting the ICS industry representatives’ joint proposal that was discussed during today’s meeting—i.e., an order adopting the rate caps and fees set forth in the Commission’s Fact Sheet² but providing for an explicit per-minute admin-cost recovery fee as an additive to ICS rates, consistent with the mechanism recommended by attorney Andrew D. Lipman in his comments,³ in lieu of site commissions (and other similar forms of compensation).

¹ That meeting was attended by Commissioner Clyburn, Rebekah Goodheart, Legal Advisor to Commissioner Clyburn, Stephanie Weiner, Senior Legal Advisor to Chairman Wheeler, Jonathan Sallet, FCC General Counsel, and Suzanne Tetreault, FCC Deputy General Counsel, and by ICS industry representatives from Global Tel*Link Corp., Securus Technologies, Inc., Telmate, LLC, and Pay Tel Communications, Inc. A separate ex parte notice will be submitted concerning this meeting.

² See Fact Sheet: Ensuring Just, Reasonable, and Fair Rates for Inmate Calling Services (rel. Sept. 30, 2015), *available at* <https://www.fcc.gov/document/fact-sheet-ensuring-just-reasonable-fair-rates-inmate-calling>.

³ See, e.g., Andrew D. Lipman, Ex Parte Presentation (Sept. 28, 2015).

The joint proposal is the only proposal that achieves the Commission's goal of a market-based approach to ICS⁴ that will create incentives for facilities to select providers based on lower costs to consumers and create competition between providers based on maximizing consumer welfare. It also provides the best long-term, sustainable solution to comprehensively reforming the industry that provides benefits to all of the groups represented in this proceeding:

- Inmates and their families, and those advocating for them, will benefit from low, reasonable rate caps and fees (and the prohibition of many unfair ancillary charges). They will also benefit because a low per-minute cost recovery fee additive replacing the existing site commissions scheme, coupled with the prohibition of other payments from providers to facilities, will remove upward pressure on ICS rates.
- Correctional facilities, regardless of their size, will receive reliable, predictable compensation to offset their costs related to the provision of ICS, and they will be able to budget for same. Critically, correctional facilities will be incentivized to negotiate with providers for lower rates in order to spur more phone usage, which increased usage will benefit inmates and their families and the public at large. In the unique ICS industry, where end users do not select the provider from whom they get service, this will create a competitive market imposing downward pressure on rates.
- ICS providers will benefit from the certainty and stability in the marketplace that comprehensive reform will bring and will be able to focus their efforts on improving technology and service for ICS end users.
- With rules in place that address rates, fees, and provider-facility payments, regulators will be able to monitor (and enforce) compliance therewith as they consider further reforms to address emerging issues and technologies.

The Commission's proposed approach described in the Fact Sheet will likely result in appeals by representatives of virtually all the stakeholders in the proceeding (other than possibly the inmate advocates). The providers' approach, however, which offers benefits to all parties, should minimize legal challenges. And, in the event of a challenge, the Commission's order would be on firmer ground than as under the Fact Sheet. Pay Tel does not have perfect knowledge, of course, concerning the future actions of other parties—but, based on its best information, Pay Tel believes that the joint proposal has several advantages with regards to the ultimate sustainability of the order:

⁴ See, e.g., *Rates for Interstate Inmate Calling Services*, Second Further Notice of Proposed Rulemaking, 29 FCC Rcd 13170, at ¶ 6 (2014).

ICS Providers

- Adoption of the new joint proposal endorsed by the dominant providers of ICS—GTL, Securus and Telmate—would ensure their support for the order, at least as to the matters addressed by the proposal.⁵ Given that these companies were successful in obtaining a partial stay in the current litigation over the initial rules adopted by the Commission, the significance of “buy-in” from these companies should not be underestimated.
- Pay Tel would not appeal from such an order consistent with the joint proposal nor would it support such an appeal of the order. Although its resources are dwarfed by the larger providers, Pay Tel has been an active participant in this proceeding and is representative of smaller providers in this industry targeting a distinct but important market segment (i.e., jails).
- It is possible that one or more other ICS providers would challenge such an order, but such an appeal would face significant challenges—particularly with regard to “line drawing” decisions by the Commission—if significant portions of the industry were not supportive of the appeal.

Correctional Facilities

- Correctional facilities have clearly supported an explicit per-minute cost recovery fee throughout this proceeding.⁶ Jails have expressed serious concerns with the reform proposed in the Fact Sheet.⁷ They are concerned that smaller facilities, with less bargaining power, will receive no compensation under the Fact Sheet’s regime and that the provision of ICS in jails may be jeopardized.⁸ The joint proposal discussed above will ensure that every facility gets some compensation to offset the costs of providing ICS, with the promise of additional monies if calling is stimulated. This should minimize the likelihood that facilities would appeal the order.

⁵ Of course, none of the parties has seen the proposed ICS order. Naturally, the parties’ commitment was limited to specific matters addressed in their proposal and conditioned, of course, on issuance of an order consistent with the proposal.

⁶ See, e.g., National Sheriffs’ Ass’n, Ex Parte Communication, WC Docket No. 12-375 (July 14, 2015); National Sheriffs’ Ass’n, Ex Parte Communication, WC Docket No. 12-375 (June 12, 2015).

⁷ See, e.g., National Sheriffs’ Ass’n, Ex Parte Communication, WC Docket No. 12-375 (Oct. 14, 2015).

⁸ They have also expressed justifiable concern about the ability to “flash cut” to a system of lower rates and substantially reduced commissions. They point out that budgets are set in advance and rely on the availability of projected receipts. Pay Tel acknowledges this point and has consistently advocated for a longer transition period for the new reforms to give time for facilities to prepare for the new reality where funds from ICS are limited.

- Similarly, a challenge to the amount of the admin-cost recovery fee would be inherently difficult in view of the limitations of the data submitted by the correctional facilities (i.e., they did not present a formal cost study) and the deference afforded the Commission in evaluating and weighing the data before it.

Inmate Advocates

- Advocates for inmates and their families are also unlikely to appeal the order contemplated herein. The advocates, generally, appear to support the rate caps and treatment of fees as set forth in the Fact Sheet. They have also consistently criticized the site commissions system, and at least the Wright Petitioners have acknowledged that the FCC has jurisdiction to prohibit site commissions⁹ (although they have advocated for a “work it out solution”).
- Substantively, attempts to challenge the order as the ICS providers have proposed it would face a very high hurdle in proving that the Commission’s policy choices in prohibiting commissions and/or allowing admin-cost recovery must be reversed.

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In accordance with Section 1.1206 of the Commission’s rules, this letter is submitted for inclusion in the record of the above-captioned proceeding.

Please do not hesitate to contact the undersigned should any questions arise concerning this presentation.

Sincerely yours,

/s/ Marcus W. Trathen
Marcus W. Trathen

⁹ See, e.g., Wright Petitioners, Comments, at 7-10, WC Docket No. 12-375 (Jan. 12, 2015).

cc (via email):

Commissioner Mignon Clyburn
Rebekah Goodheart
Stephanie Weiner
Jonathan Sallet
Suzanne Tetreault
Travis Litman
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